IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5130 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURSINH @ BHUNDAR IBRAHIM DODIA

Versus

DITRICT MAGISTRATE

Appearance:

MR IQBAL SYED for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/01/2000

ORAL JUDGEMENT

#. Heard Ms.Banna Datta, learned advocate for Mr. E.E.Saiyed, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 26-4-1999 passed by respondent No. 1 - The District Magistrate, Baroda against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia discloses that three criminal cases punishable under Section 461 and 380 of Indian Penal Code were registered against the petitioner at Bhadarva police station and Savali police station on 17-10-98, 28-11-98 and 20-12-1998 respectively. Furthermore, 3 witnesses on assurance of their anonymity have given statement dated 15-3-1999 against the petitioner regarding the bootlegging activities of the petitioner. That on the basis of the said material, the respondent No : 1 - the detaining authority on the basis of above stated material, has come to the conclusion that the petitioner / detenu is dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been submitted on behalf of the petitioner at bar that last criminal case registered against the petitioner is on 20-12-1998, whereas, the impugned action of passing of detention order has been taken on 26-4-99 and there is no reasonable explanation for the said delay. Under these circumstances, live link between alleged anti social activities and the impugned action having been snapped, the detention order has become invalid.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASHTRA reported in AIR 1994 SC 656, the Hon'ble Supreme Court has observed that delay in taking action under detention law is fatal to the validity of the detention order. Even this Court also in the matter of ELESH PATEL VS. STATE OF GUJRARAT reported in 1997 (1) GLH 381 has also followed the said proposition by referring the various authority of Supreme Court and has held that in the absence of reasonable explanation for delayed action, the detention order cannot be sustained.

#. In the instant case, the grounds of detention is devoid of any explanation or stating any fact from which

a reasonable inference could be drawn for delayed action of about 4 months from the date of registration of last offence against the petitioner.

#. It may be noted that despite service of rule, none of the respondents has filed any affidavit and as such, in the absence of any explanation, much less, a reasonable explanation, I hold that inordinate delay in taking impugned action has rendered the detention order invalid.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 26-4-99 passed by respondent No. 1 - The District Magistrate, Baroda against the petitioner is hereby quashed and set aside. The petitioner - Sursinh alias Bhundar Ibrahim Dodia is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 18-1-2000 [A.K.Trivedi, J.]

#kailash#